IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 28194 of 2005(F)

AGAINST THE ORDER DATED IN IA.2911/04 IN OS.317/2003 of SUB COURT, PALAKKAD
.....

PETITIONER/RESPONDENT/DEFENDANT:

DEVADAS, S/O.KUTTIKRISHNAN,
PALLIKANDATH VEETTIL, KANNADI P.O., PALAKKAD.

BY ADV. SRI.K.MOHANA KANNAN
SMT.PRAVITHA A.R

RESPONDENT/PETITIONER/1ST PLAINTIFF:

V.K.JESSY, D/O.KUPPANKUTTY,
KULLIMULLIYIL, ELAPULLY P.O.,
PALAKKAD TALUK.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S.No.317/2003 ON THE FILE OF THE SUB COURT, PALAKKAD.

EXT.P2: COPY OF THE WRIT STATEMENT FILED BY THE PETITIONER BEFORE THE SUB COURT, PALAKKAD.

EXT.P3: COPY OF THE AFFIDAVIT AND I.A.No.2911/2004 FILED IN O.S.No.317/2003 BY THE PETITIONER BEFORE THE SUB COURT, PALAKKAD.

EXT.P4: COPY OF THE OBJECTIONS FILED BY THE PETITIONER BEFORE THE SUB COURT, PALAKKAD.

EXT.P5: COPY OF THE ORDER PASSED BY THE SUBORDINATE JUDGE OF PALAKKAD IN I.A.NO.2911/2004 IN O.S.NO.317/2003 DATED 11.7.2005.

EXT.P6: COPY OF THE RECEIPT FOR Rs.3,000/- REMITTED BY THE PETITIONER.

TRUE COPY

P.A.TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28194 OF 2005

Dated this the 18th day of June, 2007

JUDGMENT

Heard Smt.Zohra, learned counsel for the petitioner and Sri.V.Chitambaresh, learned counsel for the respondent. Smt.Zohra would submit that the impugned order directing payment of Rs.1,000/- to the wife and Rs.500/- to the child is contrary to the pleadings raised by the petitioner. The allegation that the petitioner has a Milma booth has been stiffly denied in Ext.P4 counter and Ext.P5 order has been passed merely on presumptions. Mr.Chitambaresh submits that there is no warrant at all to interfere with the impugned order which is an order under Section 24 of the Hindu Marriage Act and it is neither wholly unreasonable or is one which can be branded as perverse. Smt.Zohra would further submits that subsequent to the filing of the Writ Petition the respondent filed MC No.15 of 2005 before the Magistrates Court and that Court has ordered maintenance to the wife and child at the rate of Rs.1,500/-. Mr.Chitambaresh would submit that the order of the Magistrates Court is passed merely on the basis of the interim order passed by this Court on 04.10.05. Mr.Chitambaresh would place reliance on the judgment of this Court.

Having considered the rival submissions addressed at the Bar, I

am of the view that it cannot be said that the impugned order is vitiated to the extent of warranting correction under Article 227. Sri.Chitambaresh's submission that the order was justified on the pleadings of the parties has some force. Considering the totality of the circumstances attending on this case, I dispose of the writ petition reducing the amounts presently ordered under the impugned order, payable to the wife as Rs.750/- and retaining the amount ordered for the child as Rs.500/-. The court will not be influenced in any manner while taking final decision in this matter by this reduction. The petitioner is directed to clear the entire arrears at the rate of Rs.750 + Rs.500/- (total Rs.1,250/-) within two months from today.

PIUS C. KURIAKOSE, JUDGE

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